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PK-1

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-195096

DATE: August 29, 1979

MATTER OF: Coast Canvas Products II Co., Inc.

DIGEST:

- [Protest of B.d Rejection]* DLG 07654
1. *A* Clause in IFB permitted bidders to condition consideration of offer on award of contract under previous solicitations for same items. *per* Protester listed IFB number under which it had already received award before date it submitted bid. Protester contended that this was clerical error and agency should permit deletion of IFB number and consider protester for award. Only a clerical error apparent on face of bid may be corrected, however, and no error was apparent here.
 2. Waiver of condition stated in bid may not be permitted since bidder could decide after results of bidding was known whether to accept or reject award.
 3. Record does not support protester's suggestion that agency had improper motive for not considering bid and stated reason was ruse.

The protest was denied.

Coast Canvas Products II Co., Inc. (Coast), has protested the award of a contract for tarpaulins to Kings Point Manufacturing Company, Inc. (Kings Point), under invitation for bids (IFB) DLA100-79-B-0354, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania. *ENG 0108* *ABCO082*

The IFB contained a Production Capacity clause which provides, in part:

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"This offer is submitted with the provision that the offeror does not receive an award under the solicitation(s) listed below. If an award is made on any or all of the solicitation(s) listed below, this offer will not be considered:

SOLICITATION NUMBER(S) _____"

The purpose of this clause is to permit small firms with limited production capacity to bid on several outstanding solicitations, which in the aggregate may exceed their production capacity, by conditioning bids on later solicitations on failure to receive award under earlier solicitations.

Coast, the low bidder, conditioned its bid on this solicitation on award to it of a contract under IFB DLA100-79-B-0127. After bids were opened and Coast was determined to be low, DPSC requested a pre-award survey of Coast, which was negative. Pursuant to applicable regulations the matter was referred to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC). The SBA issued a COC. After that, DPSC discovered that Coast had been awarded a contract under IFB DLA100-79-B-0127 on which it had conditioned consideration of its bid. Consequently, DPSC awarded the contract to Kings Point.

Coast contends that the insertion of IFB DLA100-79-B-0127 in the Production Capacity clause, thus conditioning its bid on failure to receive award under that solicitation, was an inadvertent typographical error. Coast argues that the error is obvious on the face of the bid and that DPSC should have permitted Coast to correct the error and receive the award. Coast contends that the fact that it had already been awarded a contract under IFB DLA100-79-B-0127 on February 7, 1979, well before its bid under this solicitation was dated (February 26, 1979), makes it clear that the insertion of that IFB number was a clerical error.

Coast also notes that DPSC should have discovered this "rather tenuous" basis for rejecting its bid when

it reviewed the bids and asked for verification. Coast suggests that the fact that it was not raised until after a COC was issued indicates that it was a specious reason for rejection and the real reason was something else, which Coast does not specify.

In its response to the protest the Defense Logistics Agency (DLA) states that DPSC inadvertently overlooked the fact that Coast had been awarded a contract under IFB DLA100-79-B-0127 when it evaluated bids and did not discover this fact until the award was submitted for approval. DLA argues that it could not permit Coast to delete the IFB number after bid opening, since it was not a minor clerical error apparent on the face of the bid, as required by Defense Acquisition Regulation (DAR) § 2-406.2 (1976 ed.). According to DLA, nothing on the face of the bid indicates that the insertion of the IFB number was a mistake. DLA asserts that permitting Coast to remove the condition after bid opening would give Coast the option of having its bid considered or rejected after the results of the bidding were known, which would "violate the firm bid rule and adversely affect the rights of other bidders."

We agree with DLA's analysis. DAR § 2-406.2 (1976 ed.) provides that:

"2-406.2 Apparent Clerical Mistakes.
Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. Examples of such apparent mistakes are: obvious error in placing decimal point; obvious discount errors (for example--1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. factory; obvious error in designation of unit."
(Emphasis added.)

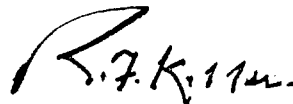
Nothing on the face of Coast's bid indicated that it did not intend to insert the IFB number in the Production

Capacity clause. The fact that Coast had already been awarded a contract under the listed IFB was not apparent from its bid. Even if that was ascertainable from the bid, it would not establish that Coast did not intend to insert that IFB number. While it is not clear why Coast inserted the IFB number, it is clear that its bid was conditioned on not receiving an award thereunder and such condition cannot be waived properly.

Although we are not questioning Coast's good faith, permitting bidders to make such changes after bid opening would compromise the integrity of the competitive bidding system, since bidders could decide, after the results of the bidding were known, whether to accept or reject award.

The fact that DPSC did not discover the reason for which Coast's bid was rejected until a considerable amount of time had elapsed is not sufficient to support Coast's suggestion that DPSC had some improper motive for not considering its bid.

Accordingly, the protest is denied.



Deputy Comptroller General
of the United States